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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1954

347 U.S.
BRA-CAN
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Lester Brand and Mary Brand,
Petitioners

vs.

Commissioner of Internal Revenue
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

Lester Brand,
Petitioner

635 Straight St.,
Cincinnati 19, Ohio

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Statutes Cited

U.S.C.A. Title 28, #347

Internal Revenue Code:

Section 23. Deductions from Income

(a) As amended by Sec. 121 (a) Revenue Act of 1952, c. 619, 56 Stat. EXPENSES

(1) Trade or Business Expenses

(A) In General -- All the ordinary and necessary expenses paid or incurred in carrying on any trade or business, etc.

The Constitution and Bill of Rights

In The

Supreme Court of The United States

October Term, 1954

Lester Brand and Mary Brand,
Citizens of The United States of America

vs.

Commissioner of Internal Revenue

Petition for Writ of Certiorari

To the Honorable, The Supreme Court of the United States

The petitioners, Lester Brand and Mary Brand, his wife, respectfully pray that a writ of certiorari issue to the United States Circuit Court of Appeals for the Sixth Circuit, to review a final judgment of that court, entered on the eighth day of January, 1954, whereby that Court affirmed the judgment of the Tax Court of The United States in a cause entitled Lester Brand and Mary Brand, petitioners, versus Commissioner of Internal Revenue, respondent, this cause being numbered 11, 869 in the said United States Court of Appeals for the Sixth Circuit. The judgment of the Circuit Court of Appeals is not yet published in the Second Federal Reporter.

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STATEMENT OF MATTER INVOLVED

This case arises out of a suit for declaratory judgment suit filed by Clifford G. Brand and Louis Brand against their brother, Lester Brand, the petitioner, and his wife, Mary Brand. This suit asked the Common Pleas Court of Hamilton County, State of Ohio, to construe a contract wherein Mrs. Josephine Brand, mother of the three brothers, stated in a preamble of the contract that she intended to divide her entire estate, before her death, among the three brothers. The details of this division are contained in the balance of the contract which contained a final paragraph obligating all parties signatory to execute their respective parts of the contract within a 15-day period.

Several years after the contract had been signed and executed to the last detail the brothers filed the declaratory judgment suit. The contract, however, was not incorporated in the petition and Judge Dennis J. Ryan who heard the case rejected preliminary motions that the contract be made a part of or a supplement to the petition.

The petition contained only one sentence of the contract which stipulated that Lester Brand had agreed to bequeath to his two brothers a certain brick house at 635 Straight St., Cincinnati 19, Ohio, the home of Lester Brand for 30 years.

It is important to note that the laws of the State of Ohio do not give state courts any jurisdiction over short-term contracts. Jurisdiction is confined to long-term contracts. The argument of

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the two brothers was that the contract was a long-term agreement because they had not inherited the property. This argument was fallacious, however, since all parties to the contract had actually fulfilled all their obligations within 15 days. All Lester Brand could do was make a will in favor of his brothers, which he did. Nothing more could be done until after his death when final action on the will would be taken by Probate Court.

The only cause of action given by the two brothers in their declaratory judgment suit was that Lester Brand had been married to Mary King of Brooklyn, N. Y., three months before the suit was filed. This marriage and subsequent birth of a child to the couple invalidated the will made by Lester Brand who had left his entire estate in equal shares to his two brothers. This was the only kind of a will Lester Brand was able to make to perform his part of the contract. He was debarred from making a will leaving the house to his brothers because the house was the property of his mother and was not transferred to the said Lester Brand until nearly a year later.

When the case came to trial, Judge Ryan, in a speech to the litigants, admitted he knew nothing about the case, adding that he did know that all three brothers were over 50 years of age, a time of life when men should think of settling things amicably, instead of fighting.

Judge Ryan suggested that the litigants get together and settle the matter in a conference room. His action, however, was very unfair. In the first place, the suit was in the nature of legal blackmail, a situation which must be met by those persons

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who are blackmailed with a steadfast refusal to yield to the demands of the blackmailers. In the second place, had Judge Ryan read the contract he would have realized that it was 1) totally invalid and unenforceable and 2) that he had no jurisdiction in the case.

At the conference that followed, Lester Brand refused to be bulldozed or intimidated, but his wife, Mary Brand, signified her intention of making a deal with the two brothers. Let us now look into her position. She saw clearly that execution of the will contract was not going to harm her husband, since he would remain in full possession and full enjoyment of the property until his death. However, the brothers had already threatened to throw her out of the house as soon as her husband died. She believed and, perhaps rightly, that she would have to fight the case all over again after her husband's death. And, if she lost, the house would be taken not only from her but from her daughter.

It may well be asked -- How, after her husband's death could she possibly lose? We leave the answer to that one to any person who has had some experience with the way courts act.

The upshot of the conference was that Mrs. Brand agreed to pay the two brothers $2700. She agreed to that amount because approximately this sum of money was in a Cincinnati bank, having been transferred only a short time ago from a Brooklyn bank, representing her entire life savings as a baby nurse, her occupation before marriage.

Her husband, Lester Brand, agreed to act as her agent in the

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matter and it was he who paid the $2700 to the two brothers, drawing the money out of a joint savings account. Then, when the time came for filing their 1948 income tax return, the $2700 was listed as a deduction on the grounds that the money was spent to insure, preserve and protect the property which was Mrs. Brand's home and (as a housewife) her place of business.

The Internal Revenue Bureau pondered over this return for at least three months before deciding it was a just, honest and legal return on the basis of reasons given by the petitioners.

Now let's go back a bit. The petitioner, Lester Brand, is a wage earner. It follows that he was subject to the withholding tax, accomplished by payroll deductions. The net amount that was withheld from his pay was slightly in excess of $300.

However, because of the $2700 deduction, the 1948 income tax return filed by the petitioners showed their total exemptions exceeded their total income by $600. This meant that the petitioners owed no income tax for that year. So, on or about June, 1948, the Internal Revenue Bureau refunded the $300. In so doing it made the following admissions:

1) The $300 had been illegally seized in the first place.

2) The income tax return filed by the petitioners was just, honest and legally acceptable.

Thus the withholding tax becomes one of the crucial issues of this case. The petitioners claim that the seizing of $300 from the pay of Lester Brand was an illegal seizure of private property without due process of law. They challenge the constitutionality

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of those provisions of the Internal Revenue Code providing for the withholding tax.

On or about December of 1948, the petitioners received a letter from the Internal Revenue Bureau in which one of its agents claimed the $2700 deduction was not allowed by law. The letter included an enclosure in the nature of a tabulation, indicating that the petitioners owed $294.50 on their 1948 income tax. Negotiations between the Internal Revenue Bureau and the petitioners then proceeded for some time, the net result being that in the middle of 1949 a deficiency notice was sent to the petitioners who were asked to pay $294.50 plus two years interest at six per cent. The deficiency notice has since been incorporated in the petition filed by Lester Brand and Mary Brand against the Commissioner of Internal Revenue in the Tax Court of the United States.

The hearing before Judge Bolen B. Turner in the Tax Court was a speeded-up affair lasting about 10 minutes. Reference to the gross unfairness of the hearing and the various civil rights of the petitioners which were violated can be found in the briefs filed with the lower courts.

Subsequent handling of the case by Judge Turner resulted in a series of situations which prevented the petitioners from presenting their side of the case.

1) Judge Turner prevented the petitioner, Lester Brand, from examining two Internal Revenue agents responsible for bringing the deficiency notice against him. The evil that resulted was that Lester Brand was prevented from introducing his income tax return

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for 1948 as evidence in the case.

2) Judge Turner accepted in evidence a petition asking for a declaratory judgment that the brothers had canceled and repudiated. The case before Judge Ryan came up on an amended petition.

3) Judge Turner also choked off Internal Revenue Bureau counsel so that he, also, was unable to present the income tax return in evidence.

4) Judge Turner prevented the petitioner, Lester Brand, from putting his wife on the stand. In so doing, Judge Turner prevented the petitioners from presenting their defense in the case and thus deterred them from presenting arguments on this defense both before the Tax Court and the Court of Appeals.

The defense actually made by the petitioners appears in its best form in the mimeographed brief filed by them in the Court of Appeals. Since everyone insisted it was Lester Brand who had paid the money, the petitioner claimed he was in the house rental business -- he was renting two houses at the time -- and that the $2700 was a deductible expense or an operating cost of this business because the money was spent to insure, protect and preserve one of the houses that was being rented.

JURISDICTION OF THE SUPREME COURT

Jurisdiction is given to the Supreme Court of the United States to grant a writ of certiorari to review a decision of the United States Court of Appeals. U.S.C.A. Title 28, #347.

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QUESTIONS PRESENTED

The following questions are presented in this case:

1. Is the withholding tax as applicable to the wage earner constitutional?

2. Is it allowable for a housewife, filing a joint income tax return with her husband, to claim as an occupational expense or an occupational loss a sum of money that she spent to insure, preserve and protect the home in which she was living and which, therefore, can be considered her place of business?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The petitioner, Lester Brand, claims the payroll withholding tax is unconstitutional for the following reasons:

1) It is an illegal seizure of property without due process of law. No interest is paid on the money which is seized from three months to 15 months in advance of the time it is due.

2) From the employer's standpoint, it places him in a position of involuntary servitude by forcing him to collect the money without his express consent and without giving him any pay for the tremendous work involved.

3) It is class legislation. Because the Internal Revenue Bureau is unable to take many legal deductions and exemptions into account in advance, various members of the wage earner class are treated unequally, some unjustly.

The withholding tax has two salient features. 1) It seizes the tax before it is due. 2) It collects it at the source of the income.

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This applies to the wage earner. It does not apply to the landlord. It does not apply to the person who lives on dividends or royalties. It does not apply to the small business man or to the corporation.

The petitioner holds that the law is discriminatory because it does not apply the principles of the withholding tax to the classes above mentioned. There certainly is no reason why these principles cannot be applied, although there may be some practical difficulties.

The small businessman probably will complain he does not see why he should pay his tax in advance when the chances are he'll wind up the year in the red. The answer to that is that if this merchant winds up in the red, the government will refund the money he paid in advance, the same as it now does with the wage earner.

It is on these grounds that the petitioner claims the withholding tax is a vicious piece of class legislation. It is a violation of that historic principle that all individuals and classes must receive equal justice -- equal treatment -- under the law.

4) It constitutes a violation of the civil rights -- freedom of contract -- of both employer and employee. Let us suppose an employer agrees by contract to pay his employee $100 a week. Yet, when the employee gets his pay, it amounts to only $70 or $80, depending on exemptions. The employer says: "You were paid $100, but before you got your hands on it the government took our $20 or $30. The employee says: "Oh, no! That is a tax the

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government levied on your payroll and now you are passing the tax on to me."

Or let's look at it this way. If there was no tax, it is certain that the employee would be satisfied with a pay rate of $70 or $80 a week, instead of $100 a week. Since there is a tax, the employer is forced to grant the employee the higher salary. The difference between the $70 or $80 a week and the $100 represents the tax levied by the government. Thus it becomes clear that it is the employer who actually is paying the tax.

This transaction -- however you look at it -- represents a serious infringement on the civil rights of the parties involved. It is also worthy of note that other governmental agencies are busy at work forcing the employer to raise wages and otherwise interfering with his contractual relations with his employee, a rather selfish procedure since every time wages are raised by governmental action the Internal Revenue Bureau proceeds to grab a still larger slice of the employee's pay check.

Indeed there have been instances in which a $5 pay raise was granted and yet the net effect was that the take-home pay of the employee was the same, with the entire $5 "raise" going to the Internal Revenue Bureau.

Some time ago an employee of The Enquirer, the newspaper where the petitioner works, did a bit of extra work and was told he would get a dollar extra pay that week. Now The Enquirer, like most employers, shies away from overtime pay and extra pay like a horse shies away from a rattlesnake. The employee, therefore,

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looked with anticipation to getting his paycheck since it was quite rare for anybody to get above a fixed sum. However, when this employee got his paycheck he found he was being paid $5 less than usual.

So he slapped his paycheck down in front of the payroll clerk and demanded: "How come I'm getting $5 less this week?"

"Elementary, Mr. dear Watson," the payroll clerk replied. "That extra $1 you were paid put you in a higher income tax bracket."

Things like that have a bad effect on relations between employees of the same company and also between employer and employee.

When labor and management get together in a bargaining session these days, they have to take into consideration the vagaries, quirks and injustices of payroll deduction. They are like two dogs fighting over a piece of meat. Both dogs have to keep a weather eye on the American eagle that is hovering overhead and getting ready to swoop down and seize the meat away from both of them. The dogs are lucky if they escape unharmed.

The petitioner holds, therefore, that payroll withholding constitutes a serious interference in the contractual relations of employer and employee. There was little excuse for it in war time. There is no excuse for it in peace time.

See also final paragraph on Page 15.

Practical Effects of Payroll Withholding Taxes

1) The first effect is that it takes one billion dollars our of mercantile circulation for a period of one year. Since this

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money could be used many times over throughout the year, it may account for the loss of as many as five billion mercantile transactions.

2) An employee who gets $100 a week under the withholding tax plan -- getting $80 a week take-home pay -- would actually be better off getting only $80 a week without payroll deductions. The employer, of course, would save $20 a week on every employee paid $100 under the withholding plan. Now here's how the employee would benefit. In the first place, his income tax would be less since he would be earning less. However, the employee would be conscious that Uncle Sam would insist on his paying his income tax on the coming March 15 and the probabilities are that the employee would start cutting out a lot of foolish extravagances he was indulging in when he thought his pay was $100 a week. The net result will be that this man will be able to live better than when he was making $100 and still have no trouble paying his tax at the proper time.

3) Now let's consider the plight of the man who makes $100 but finds that payroll deductions have cut his pay to $80. Since he earns $100 a week, it is not unreasonable to suppose that he plans on spending $100 a week. And what happens? At the end of the year he is $1040 in the red. That means one of two things. Either this man borrowed the $1040 from a loan company or he bought his major household furnishings on time. So he has to pay high interest rates. So, instead of being $1040 in debt, he finds that the interest has increased his debt to $1500.

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As years roll by, this man sinks deeper and deeper into debt and winds up insolvent. After about two years, his creditors will start garnisheeing his wages so there is an outside chance that one day this wage earner will find his entire paycheck has been seized -- payroll withholding will account for a $20 or $30 deduction and the legal garnishee process the rest.

The petitioner is convinced that something like this is happening right now, otherwise he sees no way to account for the facts that payment-on-time transactions and friendly finance company offices have doubled in number since payroll deductions became the law of the land.

Now let's see how the same wage earner, making $100 a week, would fare if payroll deductions were abolished. Let's also assume he is a married man with no other dependents except his wife. Let's suppose that he also is planning on spending his entire wages each week. At the end of the year this wage earner will be exactly even. He will not owe anyone a single penny. Of course, his income tax will be due on the coming March 15. It will amount to approximately $730.

How is he going to raise that amount? Here is one way: For the next three months -- 13 weeks -- he will take $56 out of his paycheck and lay it aside. In 13 weeks he will have saved $728. In those weeks, however, he will have to cut down his household and personal expenses to $44 a week. He does this by putting off the purchase of major household items such as television, refrigerators, etc. And the fine thing is that,

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beginning April 1, he will start living again on a $100-a-week scale.

Actually this wage earner would be a good deal better off than the previous paragraph has made out. Since he had a full year when he had $100 a week to spend, it is not unlikely that he saved at least $210, with the balance due on his income tax only $520. He could make up this balance by living for 13 weeks on $60 a week, then return to his old program of spending $100 a week.

Now let's suppose this fellow's wife, on the last week of December, gave birth to twins. That would mean medical expenses, say about $270. In that case the man whose paycheck had not been tapped by the government would have to pay an income tax of $460. Add up his tax and medical expenses and we get $730, the same amount he owed before. He would, of course, be able to make the same arrangements to pay his bills as before, living on $60 a week for three months and $100 a week the rest of the year, finishing his second year entirely free of debt.

Now let's consider the fellow whose $100 pay has been reduced to $80 by payroll deductions. The birth of twins has not reduced payroll deductions since the twins were born the last week in December. So he is $1040 in debt before the twins -- with interest spiraling the debt to $1500 -- and he also owes medical expenses of $270. Those debts and the birth of twins have made this fellow frantic. Chances are he'll forget to claim his two extra exemptions. Even if he does, he'll have to wait until next June to get his $270 back. And since he borrowed the money to pay maternity bills from

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a finance company, he'll have to pay an extra $50 interest.

One of the reasons why the episode of the twins was used here was to prove that Internal Revenue has no way of figuring out how many exemptions or how many justifiable deductions a taxpayer may have, either at the first of the year or at any time thereafter ... an example of the grave injustices that result from the operation of the withholding tax.

Stated bluntly, payroll deduction is a racket. You can always tell a racket by the fact that everybody wants to horn in and get a part of the gravy. The way it stands now competitors and imitators of the original idea have slashed the wage earner's paycheck into ribbons. Besides income tax deductions there are deductions for hospital care, group insurance, Community Chest, dues to credit unions, social security, old age benefits, personal insurance and finally, deductions given to banks for Christmas Fund purposes.

A worker's paycheck should be a sacred and inviolate thing, as sacred as his home or the dignity of his person, but alas, it has been profaned and riddled by despoilers who have descended upon it like the Huns upon ancient Rome, leaving the wage earner, in some cases, absolutely nothing.

Wait a minute! We have forgotten something! The good old garnishee that can slice away up to 70 per cent of the wages!

Payroll deduction is as illegal as wire-tapping. In one case the government gets between a flow of conversation between a traitor and his accomplice; in the other case the government gets between the flow of wages between a loyal employer and his loyal employee. Both

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processes seek to prevent crime: wire-tapping treason, wage-tapping, tax dodging.

Judge Turner's Decision

Judge Turner based his entire decision on half of a sentence in the declaratory judgment petition. The entire sentence was approximately as follows: By reason of said contract the two brothers claim to be owners in fee of half-interests in the property.

Now we know the contract had a 15-day performance clause and was fully executed. The only thing the brothers could claim had been left undone was that their alleged right to inherit had not been translated into a concrete inheritance.

Thus, "by reason of said contract," meant the brothers were claiming a right to inherit. So, substituting one phrase for the other, we get the following: By reason of our right to inherit the property, we claim to be owners of the property.

Let's analyze this. If they are the owners of the property, they cannot inherit it. If they have a right to inherit the property, they cannot be the owners of it. Thus Judge Turner's decision is exposed for what it is: arrant nonsense.

When he appealed Judge Turner's decision, the petitioner claimed he had a right to deduct the $2700 because it pertained to the insurance and protection of a house that was being rented in part. Since the petitioner was renting two houses, he claimed he was operating a rental business, the $2700 thus becoming an allowable business deduction.

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The Case for Mrs. Brand, Housewife

The petitioner presented this argument because Judge Turner had not permitted him to present a defense that was much more apropos; because no one connected with the government at any time has been willing to admit that it was actually Mrs. Brand who paid the $2700.

Reasons why the payment of $2700 by Mrs. Brand to the two brothers was an allowable deduction has been touched upon in several briefs submitted to the Court of Appeals; notably in one brief that is in question and answer form.

So only one question will be dealt with here: Was Mrs. Brand the owner of the money that was paid?

At the hearing before Judge Turner a bankbook was presented showing that Mrs. Brand had transferred this money -- her entire life savings -- from Brooklyn to Cincinnati only a short time before she paid it over to the brothers. This money was in a joint husband-wife savings account when it was drawn out for payment to the brothers.

The petitioner believes that the law on joint accounts is that the entire amount can be considered to be the property of either party. In case of emergency, it all belongs to the one who gets there first.

In the second place, the deduction was claimed in a joint income tax return. In such a return, both husband and wife can be considered as pursuing an occupation or profession and both should be entitled to the deduction of occupational or professional expenses regardless of the percentage of total income that either one of them earned.

One way to determine who owned the money that was paid to the brothers would be to determine who actually had control of the money and who spent it. In the petitioner's household Mrs. Brand had complete

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control of all the money earned by her husband. She also spends all of it except about $2 or $3 a week which the petitioner uses for carfare and a meal while at work five nights a week. Since his wife stuffs him to the neck when he is at home, the petitioner's meal away from home usually consists of a 5¢ cup of coffee and a 10¢ hot dog.

In one sense Mrs. Brand can be considered as earning the entire income because she is the operator of a human machine. In industrial life we all know that the machine does the work but it is the operator who gets the money. So it is here.

It may well be argued that there is a difference here; that a person -- a human machine -- can operate independently without the guidance of another operator. So let's see what the situation was in the instant case.

When the petitioner first became acquainted with his future wife, he was ill, penniless and without a job. The petitioner had been told by a physician he would never be able to work again. But under the inspiration of the woman who was to become his wife, the petitioner obtained a job. The marriage took place several years later. Up to this time, however, the petitioner had made a little progress in his work and was receiving low wages.

But immediately after his marriage, the petitioner started forging ahead and his pay was more than doubled. As evidence of this the 1948 income tax claimed by Internal Revenue was $294.50 whereas the petitioner's 1953 income tax totaled $762.60. It should be plain by this time that it is Mrs. Brand who earns the money.

The petitioner is just a human machine who is fed, clothed,

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cared-for and inspired by his wife. In a very real sense, all that the petitioner is, has or will be he owes to his wife. So, no matter how you look at it, the money that was paid to the brothers was her money. If the contract was no good, the expenditure must be regarded as an occupational loss. If the contract is regarded as valid, or if we simply disregard the contract, then the expenditure must be regarded as an occupational expense. Mrs. Brand is a housewife by occupation. In pursuance of that occupation she spent $2700 to insure, preserve and protect her home -- her only place of business. Thus the $2700 becomes a legally deductible item on the joint income tax return filed by Mr. and Mrs. Lester Brand.

The situation outlined above is not at all unusual. As far as the wage earner is concerned, it is typical and commonplace throughout the United States of America.

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Will Outlawing of The Withholding Tax Result

In a Financial Crisis?

Let's begin this discussion with a quotation from the Saturday Evening Post, week of February 27, Page 102, Col. 3, the quotation being part of an article written by Maj. Gen. William F. Dean from a series entitled: "My Three Years As A Dead Man."

"The three (movies I saw while I was prisoner) were The Fall of Berlin, a fictionalized account of Russian heroism in World War II; the International Youth Congress, a documentary... and a film celebrating the victories of the Chinese Communist Armies. This featured a Pieping parade in which virtually all the trucks, tanks and howitzers were American products now in possession of the People's Army."

On the day the petitioner read this quotation the newspapers were playing up a story which stated that Syngmann Rhee was going to reopen the Korean war -- also with American trucks, tanks and howitzers.

It is a solemn thought, gentlemen, that not a war can be fought anywhere in the world in the next five years without either one or both combatant nations using American-trained troops and planes, ships, arms and equipment made in this country.

Indeed, when representatives of foreign nations gather round the diplomatic poker table every single chip that is used is labeled "Made in U.S.A." on both sides.

This nation has a long history of lend lease and the atomic bomb can justly be called the apotheosis of lend-lease. Besides, we are giving agricultural assistance, technical assistance and food,

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clothing and American dollars to nations all over the world.

Yet there is not a single nation in the world that has any love for this country. God loves a cheerful giver, but nobody else does. People hate being patronized and they hate the patron most of all. All Uncle Sam has got for his good deeds is his badge as an Eagle Scout. Present policies of the United States of America both at home and abroad can best be described as Boy Scoutism.

Once payroll deductions are outlawed, this nation will have to cut out a lot of foolish extravagances and it will be better off in the long run. However, let us remember that the outlawing of payroll deductions will not reduce the income of this nation by a single penny. True, the nation will have to tighten its belt for a while, yet at a time when the wage earner will be loosening his.

Please remember this the next time some government official comes around and says what a terrible thing it will be if payroll deductions are abolished.

It is a fine thing, perhaps, to lend a helping hand to our foreign brothers, but it is a much finer thing to come to the rescue of the hard-pressed wage earner.

Charity begins at home!

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Postscriptum

The petitioner would like to call the attention of this honorable court to the punitive nature of the withholding tax. "The wage earner is a tax-dodger at heart," the government says, "therefore he must be punished."

The punishment is in the nature of a premature garnishee taken before the existence of debt and without any court order authorizing the seizure by means of the withholding tax. The government exacts the same punishment or penalty, when it seeks to collect delinquent taxes, only in this case the tax is due and payable and a proper court order authorizing the garnishee is obtained.

Taken together these two garnishees -- the legal and illegal -- may absorb the entire wages of the wage earner. This procedure, if applied to agriculture, is like drilling a hole in the farmer's milk pail and then diverting a stream that he needs to water his stock. At best, the withholding tax represents a serious lowering in the wage earner's standard of living; at worst, it condemns the wage earner to insolvency and slow starvation.

It is just as bad for the government to invade the source of a worker's income as it is to invade and destroy his home; indeed, a man can live much easier without a home than he can without wages.

At best, the withholding tax represents what Edmund Burke, the great English statesman, termed "iniquitous legality"; at worst, it is an imposition so cruel, so unjust and so vast that it becomes a tyranny without a parallel in the history of the world -- a tyranny that would have revolted the souls of the tax-dodging founders of our country.

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A dark picture, indeed. Yet all we need to paint a picture of unsurpassing brightness is to black out or expunge the withholding tax from the law of the land. Once the withholding tax is outlawed, the wage earner will have an additional billion dollars to spend in the coming year on food, clothing and manufactured products. The expenditure of this money will bring a high peak of prosperity to the farmer, the merchant and, eventually, to the manufacturer. Thus profits will rise, wages will rise and -- praise be the Lord! -- the Internal Revenue Bureau will be collecting the highest taxes in its history.

Respectfully submitted,

Lester Brand,
Petitioner

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FILED
MAR 25 1954
HAROLD B. WILLEY, Clerk

No. 648

The Supreme Court of the United States

SUPPLEMENTARY BRIEF

in support of

WRIT OF CERTIORARI

in the case of

Lester Brand and Mary Brand,
Petitioners

vs.

Commissioner of Internal Revenue
Respondent

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Seizure of Private Property Without Due Process

Let's take the case of a wage earner who has a wife and six small children to support. This man is allowed to deduct $4800 from his income for personal and dependency exemptions. It should be clear, therefore, that this man does not owe the government a cent in income tax until he has earned more than $4800. Let us also suppose this man's annual salary is $9600 a year.

The way things are now, a weekly sum is deducted from this man's wages by his employer, who is compelled to perform this illegal and unconstitutional act.

Now let's assume that a depression forces this man to lose his job after he has worked exactly half a year. Let's also suppose the depression lasts long enough to prevent this man from getting another job the rest of the year.

Now let's make out this man's income tax for him. He has earned $4800 and he has $4800 in exemptions. Therefore he owes no tax.

Internal Revenue, however, figured on the basis of his annual salary and exemptions that he owed approximately $1040, payable in 52 weekly installments of $20 each, the first installment being taken from his salary due the first week of the year.

By the time June 30 has rolled around, the government has seized illegally the sum of $520 from this man's pay...seized it from a man who has a wife and six children to support.

Of course, this man is going to get his money back, eventually. First, however, he must file his income tax return the coming March 15 and in the coming June, about a year from the time this jobless man had dire need of the money, the government will return the sum it had seized illegally.

Let us now explain why we use the term illegal seizure. The petitioner claims those sections of the Internal Revenue Code authorizing payment deduction are in contravention to those sections of the same code permitting dependency exemptions and other deductions from gross income.

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If dependency exemptions are allowed, it certainly follows that payroll deductions are illegal until such time as the wage earner has earned a sum in excess of the amount allowed for his dependency and other exemptions. Before that time the wage earner owes nothing and nothing should be taken from his wages.

The Right To Pay Taxes

In previous pleadings the petitioner pointed out that it was not the wage earner who actually was paying the income tax but his employer who was deducting the amount ordered seized by Internal Revenue from the man's wages.

Thus it becomes clear that the wage earner has been deprived of his constitutional right to pay his own income tax. Make no mistake about it, the right to pay taxes is the most important constitutional right the wage earner enjoys.

Take away the right to pay taxes and we also take away at the same stroke the right to own and control property: in this case, wages. Thus the wage earner is transformed into an abject slave whose property and the fruits of whose labor are subject to ruthless seizure by the government and his master.

If the petitioner were asked what was the most important difference between a free-man and a slave, he would reply: "The free-man has the right to pay taxes, the slave has not this right." Once a man has been made a slave by depriving him of his right to pay taxes, you have gone a long way toward depriving that slave of all of his property, his liberty and even his life. Indeed, a man's right to life, liberty and the pursuit of happiness depends, fundamentally, on his right to pay taxes.

The petitioner claims the wage earner was sold into slavery when his right to pay income taxes was taken away from him and placed in the hands of his employer. If Congress passed a law permitting the wage earner's

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employer and the Director of Internal Revenue Bureau to cast his ballot for him it would be unconstitutional, but no more so than the Internal Revenue Code which permits the wage earner's employer and Internal Revenue to pay his tax for him.

It might be suggested that the complaining wage earner could have recourse to the Tax Court, or could file an injunction suit in U. S. District Court. But both avenues of justice are barred to him because they would cost too much and take too long before a final judgment was reached.

The corollary to the right to pay taxes is the right to refuse to pay taxes, providing the wage earner is willing to pay the penalty exacted upon his refusal. The way things stand now, the wage earner has no right to pay taxes and also has no right to refuse to pay taxes, that is, to prevent the ravaging of the fruits of his toil by his employer and Internal Revenue.

The instant case is proof enough that the wage earner has been sold into slavery. Judge Turner in Tax Court ruled that the petitioner had no right to act as an attorney for the purpose of questioning witnesses.

Then he made his decision on

1) An invalid contract that had expired.

2) A declaratory judgment suit that its sponsors had cancelled and repudiated.

3) A special warranty deed, resembling a deed to the Brooklyn Bridge, which he had not seen.

4) An income tax return that was not in evidence.

The petitioner was treated even more shabbily in the Court of Appeals. Judge Simons, presiding, permitted the petitioner to read only one paragraph of a four-page argument. Then Judge Miller made a decision supporting the Tax Court when it was plain that if he had read only a few words of the pleadings he would have seen this was one of the greatest miscarriages of justice in Federal Court history. Judge Miller also refused to rule on a constitutional question, making it apparent that he did not

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believe a lousy wage earner, who had no attorney, had a right to that courtesy.

Final proof that the wage earner has been transformed into a slave with no legal rights will come when Justice Department attorneys advise this court that the constitutional question has not been brought up properly and that the Supreme Court must not demean itself by rendering a decision on behalf of a common citizen of the United States -- a citizen so ignorant that he hasn't got a single citation up his sleeve.

Payroll Deduction Is Class Legislation

It is well known that a professional man, such as a physician or a lawyer, and also a farmer, are permitted by Internal Revenue to pay their own taxes whereas the wage earner is deprived of his constitutional right to pay his own taxes. The professional man and the farmer are permitted to make their own estimate of what their taxes will be and then to pay the amount of that estimate, quarterly, to the Internal Revenue Bureau. It is obviously class legislation of the most vicious sort when certain classes are permitted to pay their own taxes from their own money and on their own estimates whereas the wage earner is deprived of his constitutional right to pay his own taxes and has his wages seized ruthlessly from him.

The Solution

Congress should pass a law permitting the wage earner to pay his own taxes on his own estimate at the time they are actually due. Thus justice would be done and the government would not lose a single penny in income taxes.

Respectfully submitted,

Lester Brand,
Petitioner

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APR 1 1954
HAROLD B. WILLEY, Clerk

THE SUPREME COURT OF THE UNITED STATES

Lester Brand and Mary Brand,
Petitioners

vs

Docket No. 648

Commissioner of Internal Revenue

Supplementary Argument

The petitioner respectfully requests this honorable court to make an additional argument which will prove that payroll deduction is unconstitutional beyond the shadow of a doubt.

WAGES IS NOT INCOME

Wages received by a worker cannot be considered as income any more than rental receipts of a landlord can be considered income.

Thus the landlord is entitled to deduct from his rental receipts such items as property taxes, amounts paid for insurance and repairs, and also may deduct an amount calculated to represent depreciation. Rental receipts minus expenses equal income.

The present method discriminates against the wage earner and forces him to pay proportionately higher income taxes than all other classes. It may be argued that wage earners may claim their job expenses as miscellaneous deductions. Unfortunately, most wage earners file no income tax returns. Also, job expenses must be subtracted from gross earnings to reach adjusted income and must be allowed in addition to and exclusive of miscellaneous deductions.

(see page 2)

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Let us again take a worker earning wages of $100 a week. To arrive at his income, it is necessary to deduct from that $100 his weekly trade or job expenses.

Such deductions are many. They may include union dues of as much as $1 a week. In Cincinnati another $1 a week would be accounted for by the one per cent earnings tax now in effect. Many workers live long distances from their jobs so their transportation to and from work may total $5 to $25 a week.

In Cincinnati there are thousands of hill Kentuckians who work so far away from home they must rent a room in this city to live. This rental may be $5 a week or more. This class of people usually spend an additional $25 a week traveling to and from their homes in Central Kentucky over the week-end.

Expenses of a worker earning $100 a week would thus reach $32 a week, reducing his actual income to $68 a week. Other allowable deductions have not been mentioned.

Thus we have a law that forces the wage earner to pay a tax on his gross receipts and permits all other classes to pay their tax on their adjusted income. This plainly is class legislation of the most blatant sort and there is no question but that the withholding tax achieved by payroll deduction is unconstitutional.

Respectfully submitted,

Lester Brand

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217356

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 648

LESTER BRAND AND MARY BRAND, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The findings of fact and opinion of the Tax Court (R. 34-38) are not reported. The opinion of the Court of Appeals is reported at 209 F. 2d 255.

JURISDICTION

The judgment of the Court of Appeals was entered on December 14, 1953. (R. 49.) The taxpayers' petition for a rehearing was denied on January 4, 1954 (R. 65). The petition for a writ

of certiorari was filed on March 19, 1954. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether a sum paid to obtain the dismissal of a suit for a declaratory judgment whereby taxpayer cleared his title to real estate from the claims against the property asserted in the suit was a capital expenditure and consequently not deductible as an expense under Section 23(a)(1) or (2) of the Internal Revenue Code or as a loss under Section 23(e).

STATUTE AND REGULATIONS INVOLVED

The pertinent statute and Regulations involved are set forth in the Appendix, *infra*, pp. 7-9.

STATEMENT

The facts as found by the Tax Court (R. 34-37) may be summarized as follows:

Petitioner, Lester Brand, is the son of Louis William Brand who died testate in 1944 leaving all of his property, including $6,700 in United States bonds and certain real property, to his widow Josephine Brand (R. 34). Prior to the final distribution of the estate of Louis William Brand, Josephine Brand and her three sons, Louis, Clifford and Lester, entered into an agreement whereby one-half of the United States bonds were to be given by the mother in equal amounts to Louis and Clifford and the real property was to be deeded to Lester, upon condition that he would devise it to the other two sons at his death and that he would

care for the mother during her lifetime (R. 34-35). After the closing of the estate of Louis William Brand, the bonds were delivered to the other sons and the real property was deeded by the mother to Lester (R. 35).

Thereafter, prior to October 9, 1946, Lester Brand was married to petitioner Mary Brand. After the marriage, Louis and Clifford Brand became involved in a dispute with Lester over the real property which the mother had given to Lester. As a result, Clifford filed a suit in the Court of Common Pleas for Hamilton County, Ohio, naming Louis and petitioners as defendants. The petition in that suit recited the agreement between the mother and the three sons and the marriage of Lester to Mary, and asserted that the latter claimed an interest in the real property. The petition then alleged that, under the agreement between the mother and the three sons, Louis and Clifford were the owners of an undivided one-half interest in fee in the real property, and ended with a prayer that the court enter a declaratory judgment, "setting forth the respective rights of the parties * * * in the * * * real estate. (R. 35-36.)

When the proceeding in the Ohio court was called for trial in 1948, the judge urged Lester and his brothers to resolve their differences amicably. After a conference among them, Lester agreed to pay, and later paid his brothers the sum of $2,700 in settlement of the suit. The brothers gave Lester a warranty deed conveying to him all their title and interest in the property. The suit was then dismissed. (R. 36-37.)

In the joint income tax return filed by petitioners Lester and Mary Brand for the year 1948, they claimed as a deduction the sum of $2,700 that Lester had paid to his brothers in settlement of the suit in the Ohio court. The Commissioner disallowed the claimed deduction, and the Tax Court sustained the disallowance on the ground that the $2,700 paid by Lester to his brother was a non-deductible capital expenditure. (R. 37-38.) The Court of Appeals affirmed (R. 49).

ARGUMENT

Section 29.23(a)-15 of Regulations 111 (Appendix, *infra*, pp. 8-9) provides, as have the various Regulations promulgated under the Internal Revenue laws since 1916, that "Expenditures incurred in defending or perfecting title to property, * * * constitute a part of the cost of the property and are not deductible expenses." And the Courts of Appeals which have passed on the question have held without dissent that sums expended to compromise or to obtain the dismissal of litigation involving title to property, as well as legal expenses incurred in defense or protection of title or rights in property, are capital expenditures which must be added to the cost of the property and are not, therefore, deductible as an expense or a loss. *Levitt & Sons* v. *Nunan*, 142 F. 2d 795, 160 F. 2d 209; (C. A. 2d); *Bowers* v. *Lumpkin*, 140 F. 2d 927 (C. A. 4th), certiorari denied, 322 U. S. 755; *Burton-Sutton Oil Co.* v. *Commissioner*, 150 F. 2d 621 (C. A. 5th); *Safety Tube Corp.* v. *Commissioner*, 168 F. 2d 787 (C. A. 6th); *Schwabacher* v.

Commissioner, 132 F. 2d 516 (C. A. 9th); *Farmer* v. *Commissioner,* 126 F. 2d 542 (C. A. 10th); *Brawner* v. *Burnet,* 63 F. 2d 129 (C. A. D. C.). Cf. *Lykes* v. *United States,* 343 U. S. 118. The fact that the claims settled or compromised may have been invalid is immaterial. See *Jones' Estate* v. *Commissioner,* 127 F. 2d 231 (C. A. 5th); *Murphy Oil Co.* v. *Burnet,* 55 F. 2d 17 (C. A. 9th); *Levitt & Sons* v. *Nunan, supra.*

The issue whether the taxpayer Lester Brand paid the $2,700 in question to obtain the dismissal of a suit for a declaratory judgment whereby he cleared the title to his real property from the claims against the property asserted in the suit obviously presents pure questions of fact, and both courts below have concurred in the findings made. The settled rule of this Court makes concurrent findings of two courts below final here in the absence of exceptional error. *Comstock* v. *Group of Investors,* 335 U. S. 211, 214. The findings made in this case are amply supported by the record. In the circumstances, the courts were justified in concluding that the disputed expenditure was a capital expenditure and therefore not deductible, as taxpayers contend (Pet. 7), as an expense under Section 23(a) (1) or (2) of the Internal Revenue Code or as a loss under subsection (e) thereof, *infra,* pp. 7-8.

Petitioners also argue, in substance, (Pet. 8-23; Supp. Br. 1-4) that Sections 1621, 1622 and 1623 of the Internal Revenue Code (26 U. S. C. 1946 ed., Secs. 1621, 1622 and 1623), the income tax withholding provisions, are unconstitutional. Tax-

payers made this contention (R. 40-46) for the first time on appeal and it was properly rejected by the Court of Appeals. Taxpayers concede (Pet. 5) that the Commissioner refunded to taxpayer Lester Brand the entire $300 withheld from his wages by his employer during the year in question, 1948. Thus the question of whether Code Sections 1621, 1622 and 1623 are invalid is, so far as this case is concerned, academic. See *White* v. *Johnson,* 282 U. S. 367. In any event, the argument is without merit. Cf. *Steward Machine Co.* v. *Davis,* 301 U. S. 548; *Brushaber* v. *Union Pac. R. R.,* 240 U. S. 1.

Taxpayers claim (Pet. 6-7; Supp. Br. 3-4) that they were not granted a fair hearing in either of the courts below. It is clear from the record, however, that the taxpayers were not only allowed full opportunity to present their case but were, in addition, given assistance by both courts below.

CONCLUSION

The decision of the court below is correct, and further review is not warranted. The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.
H. BRIAN HOLLAND,
Assistant Attorney General.
ELLIS N. SLACK,
DUDLEY J. GODFREY, JR.,
Special Assistants to the Attorney General.

APRIL, 1954.

APPENDIX

Internal Revenue Code:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) [As amended by Sec. 121(a), Revenue Act of 1942, c. 619, 56 Stat. 798] *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; * * *; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * * * *

(2) *Non-trade or non-business expenses.*—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or

maintenance of property held for the production of income.

* * * * *

(e) *Losses by Individuals.*—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. * * *

* * * * *

(26 U. S. C. 1946 ed., Sec. 23.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

Sec. 29.23(a)-15. *Nontrade or nonbusiness expenses.*—

* * * * *

(b) * * *

Capital expenditures, and expenses of carrying on transactions which do not constitute a trade or business of the taxpayer and are not carried on for the production or collection of income or for the management, conservation,

or maintenance of property held for the production of income, but which are carried on primarily as a sport, hobby, or recreation are not allowable as nontrade or nonbusiness expenses. * * *

* * * * *

Expenditures incurred in defending or perfecting title to property, in recovering property (other than investment property and amounts of income which, if and when recovered, must be included in income), or in developing or improving property, constitute a part of the cost of the property and are not deductible expenses. * * *

* * * * *

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